PROBLEM OF MIXED SCHOOLS

CONSTITUTIONALITY OF INDIANA' SCHOOL LAW.

DECISION OF THE SUPREME COURT OF THE STATE ON STATE AND INDIVIDUAL RIGHTS. No. 4,207. Samuel Cory, John Beaver and Worthington Craig vs. Cary Carter, from the Marion Superior Court, Buskirk, J.

STATEMENT OF THE CASE. zen of the state of Indiana, and resided in It is important that we should settle in adschool district, No. 2, in Lawrence township, vance, the rules by which we are to be guided children in progres in said district and that his said children and grandchildren presented themselves at the school house in said district themselves at the school notice in said district and demanded admission, and to be taught therein with the white children, but were refused admittance by the appel-lees, Beaver and Craig, the director and teacher of said school, for the reason that the said school was a school for white children and not for negro children; that after the refusal aforesaid he caused to be served upon the appel-lant a written request and demand that his said children and grandchildren should be recoived and laught in the said school with the white children of said district, but they were refused admission on y on the ground that they were negroes; that said appearants and all other persons have wholly neglected, falled and refused and still neglect, fall and refuse to provide any sevool in said district, or in any adjoining district near enough for said children or district near enough for said children or grandchildren, to attend as scholars, and that by reason of the premises his said children and grandchildren are denied all opportunity to a tend any school in said district

they are entitled to do. There is no allegation that the trustee of said school distict No. 2 had failed or refused to provide the means of education for such children within the district, outside of the said school for white cht dren, to the extent of their proportion according to number, of the school resources of the said district.

The aid of the court was requested to declare the right of admission of said negro children into the school for white children; and to compel the appellants to admit them.

An alternate writ was issued against the appellants, requiring them to admit such children into the school in said district for white children, or appear and show cause why they should not so admit such children.

The appellants appeared and filed seperate

demurrers to the complaint, upon the ground that it did not state facts sufficient to constitute a cause of action, but the demurrers were nonsuited; and the appellants refusing to plead further, but electing to stand by their exceptions to the rulings of the court, the court gave Judgment for a peremptory writ of mandate.

The appellants appealed to the general term.

where the judgment of the special term was af-The error assigned is, that the Superior Court, in general term, erred in affirming the judg-

ment of the court in special term. The question presented for our decision is whether the court below erred in overruling the demorrer to the complaint, the correct so atloof which will depend upon the proper construcstatu es of this state, and the constitution of the United states; and as preliminary to the consideration of the grave constitutional question arising in the record, we proceed to inquire what provision the legisla ure has made for the education of the white and colored children of

The act of March 6, 1865, provided for the an nual assessment and collection of a tax on the property, real and personal, in the state (except that owned by negroes and mulattoes), for sup-porting a general system of common schools in years exclusive of m-rried persons. It provided the officers and agencies for the system, the mode and means of carrying it on, for locating and establishing schools and carrying them on, for building school houses, and employing teachers, etc. It was essentially white-none but we ite children between the named ages, and who were unmarried, were entitled to its privi-3 Stat., 440-472; Drapter vs. Carbridge, 20

At the session of the legislature of this state next after the ratification of the XIV. amendment to the constitution of the United States, an act was passed by the general assembly of this

SECTION 1. Be it enacted by the general as-sembly of the state of Indiana, That in assessing and collecting taxes for school purposes under existing laws, all property, real and personal, subject to taxation for state and county purposes, shall be axed for the support of common schools without regard to the race or color of the

whereof the property.
SEC. 2. All children of the proper age, without regard to race or color, shall hereafter be ineladed in the enumeration of the children of the respective school districts, tow ships, towns and cities of this state for school purposes; but in making such enumeration the officers charged, by law, with that duty, shall enumer-ate the colored children of proper age, who may re ide in any school district. In a separate and distinct list from that in which the atherschool distinct list from that in which the other school children of such district shall be enumerated Sec. 3. The trustee or trustees of each town shee, 3. The trustee or trustees of each town-ship, town, or city shall organize the colored children into separate schools, having all the rights and privileges of other schools of the township: Provided. There are not a sufficient number within attending distance, the several districts may be consolidated and form one dis-But if there are not a sufficient number within reasonable distance to be thus consoidated, the trustee or trustee shall provide such other means of education for said children as shall use their proportion, according to number

of school revenue to the best advantage.

Sec. 4. All laws relative to school matters, no inconsistent with this act, shall be deemed ap-SEC. 5. Whereas, an emergency exists for the immediate taking effect of this act, the same shall be in force from and after its passage. 3

Prior to the passage of such act, the assessment of taxes for school purposes had been confined to the property of white persons. The first section provided for the levy and collection of a tax for school purposes upon all the property within the state subject to taxation, without regard to the race or color of the owner.

The second section adds to the enumeration, directed in section XIV of the act of March 6, 1865, all colored children of the proper age, within the state, and directs them to be enu-merated at the same time with the white children, but in a separate ist or class from that in which the white children are enumerated.

The third section commands the trustees of each township, town or city in the state, to or-ganize the colored children therein, into separste schools, with all the rights and privileges of white schools in the particular township, town or city. Bu. if the number of colored children within attending distance are not sufficient to organize a school, the trustees may consolidate several districts into one for that purpose. And if the number of colored children within rea sonable attending distance are not sufficient to be thus consolidated, the trustees shall provide such other means of education for such colored children as shall use their proportion, according to numbers, of the school revenue to the best

The fourth section makes all laws relative to school matters, not inconsistent with the pro-visions of the act, applicable to colored schools.

CONSTITUTIONALITY OF THE ACT. It is, in the first place, claimed that the act or May 13, 1869, is in conflict with section 19 of arti-

arale schools, and the question presented for our decision is, whether such legislation is in conflict with the constitution of this state or the constitution of the United states.

It is contended that the act in question is repugnant to s ction 23 of article 1, and section 1 of article 8, and they are: "Section 23. The General Assembly shall not grant to any citizen, or class of citizens, privi eges or immu ities which, upon the same terms, shall not equally belong to all citizens." 1 G. & H., 33.

Section 1, article VIII. (1 G. & H., 48), declar s,

that "knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage This was a proceeding by mandate on the part of the appeller against the appellants. The appeller in his petition, allered that he was a cutpellee, in his petition, alleged that he was a citi- of common schools, wherein tuition shall be

Marion county, in the said state; that he was in placing a construction upon the constituthe father of two children, Mary and Edward In the State vs. Gibson, 35 Jud. 389, we held Carter, and the grand ather of Lucy and John that it was settled by very high authority that,

Carter, and the grand ather of Lucy and John Carter, all of whom resided with him; that he was a negro of African descent, and that his said children and grandchildren were all negroes of the full blood and of the same descent; that his children and grandchildren were respectively of the age that entitled them to the henefits of the common schools in the said district; that there was a common school for white children in progres in said district and that his words of each provision just such operation and forc, consistent with their legitimate meanthe words of each provision just such operation and forc , consistent with their legitimate mean-ing, as will fairly serve the end proposed. Ken-dali vs. The Uni'ed States, 12 Peters, 24; Prigg vs. The Commonweath, 16 Peters, 539. In the slaughter-house cases, 16 Wallace, 35, the

same rul s were laid down and fliustrated with great force by reference to the history of the times and condition of things which brought about the recent amendments to the constitu tion of the Un ted States.

Judge Cooley, in his great work on Constitu-ional Limitations, on page of says: "A cardinal rule in dealing with written intruments is, that they shall rec-ive an unvary ng interpretation, and that their practical construction is to be uniform. A construction is not to be made to mean one thing at one time and another at some subsequent time when cirumstances may have so changed, as perhaps o make a different rule in the case seem desira-ele. A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as t bend to circum-tances or be modified by publi which took effection the first day of November, opinion. It is with special reference to the varying moods of public opinion, and with a view to puting the find amentals of government beyond their control, that these instruments of severnment beyond their control, that these instruments of severnment beyond their control, that these instruments of severnment beyond their control, that these instruments of severnments of the clinical states of another state removed, to allow near the severnments of the clinical states of another state removed, to allow near the severnments of the clinical states of another state removed, to allow near the severnments of the clinical states of the state from which is removed. It is stated and important the principles of the common law. Those benificed maximum of the common law. Those benificed maximum of the common law which guard person and property have grown and expanded unit they mean vasity more and expanded unit they mean vasity more and the sering of the states of the state of the s opinion. It is with special reference or elsewhere in the neighborhood, as in right of oppression as in any other; and the necessity

bills of rights in our fundamental laws lies mainly in the danger that the legislature will be influenced by temporary excitements and passions among the people to ad pt oppressive enactments. What a court is to do, therefore, is

Again the learned author says: "The object of construction, as applied to a written constitu-tion, is to give effect to the intent of the people in adopting it. In the case of all written laws, it is the intent of the law-giver that is to be en-

forced. Another cardinal rule of construction laid down by this author is, that the whole instru-ment is to be examined in placing a construction upon any portion or clause thereof. tuat any so ambiguous as to require in-trinsic aid in its construction. Every such in-strument is adopted as a whole, and a clause each year of the white children within the respective town-hips, towns and clitics in the state, between the ages of six and twenty-one years exclusive of m-fried persons. It provided riving at the true intention of each part, and this Sir Edward Coke regards the most natural and genuin, e method of expounding a statute.

If any sect on (of a law) be intricate, obscure, or doubtful, the proper mode of discovering its true meaning is by comparing it with the other sections, and finding out the sense of one clause by the words or abvious intent of another; 'and in making this comparison it is not to be supposed that any words have been employed without occasion, or without intent that they should have effect as part of the law. The rule ap, licable here is, that effect is to be given, if possistate, entitled "An act to render taxation for sible, to the whole instrument, and to every section and clause. If different por ions seem to common school purposes uniform, and to protion and clause. If different por ions seem to wide for the education of the colored children of conflict the courts must harmonize them, if the state," which was approved May 13, 1869; and practicable, and lean in favor of a construction which will render every word operative, rather than one which may make some idle and nuga-

> "This rule is especially applicable to written constitutions, in which the people will be presumed to have expressed themselves in care ul and measured terms corresponding with the immense importance of the powers delegated, leaving as little as possi-ble to implication. It is scarcely conceivable that a case can arise when a court would be justiflable in declaring any portion of a written constitution nugatory because of ambiguity. One part may qualify another so as to restrain its operation, or apply it otherwise than the natural construction would require if it stood by itself; but one part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together."

In support of the above propositions reference is made in the notes to the following authorities: People vs. Morrill, 21 Wend, 584; Newell vs People, 7 N. Y., 109; McKoan vs. Devins, 3 Barb, 196; People vs. Blodgett, 13 Mich., 138; United States vs. Fisher, 2 Cranch, 399; Bosley vs. Mattingly, 14 B. Monroe, 89; Sturgis vs. Crowninshield, 4 Wheat, 202; Schooner Paningly Cargo, vs. United States, 7 Cranch, 59; Mattingly, 14 B. Monroe, 89; Sturgis vs. Crowninshield, 4 Wheat, 202; Schooner Panlind's cargo vs. United States, 7 Cranch, 60; Ogden vs. Strong, 2 Palne, C. C., 584; United States vs. Roysdie, 1 Hemp, 497; Southwark Bank vs. Commonwealth, 24 Penn. St., 446; Ingalis vs. Cole, 47 Me., 530; McClusky vs. Cromwell, 11 N. Y., 593; Furman vs. New York, 5; Sandf 16; People vs N. Y., Central R. R. Co., 24 N. Y., 492; Bidwell vs Whitaker, 1 Mich., 479; Alexander vs Worthington, 5 Md., 471; Cantrell vs. Owens, 14 Md., 215; Case vs. Wildridge, 4 Ind., 51; Putnam vs. Flint, 10 Pick, 504; Lud.ow vs. Johnson, 3 Ohio, 553; District Township vs. Dubuque, 7 Iowa, 262; Pattison vs. Yuba, 13 Cal., 175; Spencer vs. The State, 5 Ind., 74; Dow vs. Reed, 10 Pet, 524; Greencastle Township vs. Black, 5 Ind., 569; Stowell vs. Lord Yonch, Plowd, 365; Broome s Maxims, (5th Am. ed.) 551; Co. Lit. 381 A; Attorney-General vs. Detroit & P. R. Co., 2 Mich., 138; People vs. Burn's, 5 Mich., 114; Manly vs. State, 7 Md., 135; Parkinson vs. State, 14 Md., 184; Belleville R. R. Co. vs., Gregory, 15 Ill. 20; Ryegate vs. Wardsboro, 30 Ver., 736; Brooks vs. Mobile School Com., 31 Ala, 227; Dow vs. Dubois, 1 Harrison, 285; Dow vs. Schank, 3 Halst, 34; Walco; t vs. Wigton, 7 Ind., 49; People vs. Purdy, 2 Hill, 36; Green vs. Weller, 32 Miss., 650; Warren vs. Sherman, 5 Texas, 41; Quick vs. Whitewater township, 7 Ind., 570; Gillions vs. Orden, 9 Wheat vs. Sherman, 5 Texas, 441; Quick vs. Whitewater township, 7 Ind., 570; Gillons vs. Ogden, 9 Wheat, 188; Smith on Statutes, sections 502, 503; Sedg-wick on stat. and const. con. 229, 233, 251 and 252. An examination of the above authorities shows

present state constitution, and compare the sections in question with other portions and clauses of such constitution. We will limit our inquiry into the political condition of the negroes in this state from the organization of our state govern-ment in 1816 down to the ratification of the 18th 14th and 15th amendments to the constitution of the United States, and evidently to their statutes in other states of the union.

STATE OF THE NEGRO IN INDIANA. May 13, 1869, is in conflict with section 19 of artide or our constitution, which provides that
may terp reportly connected therewith, which
subject shall be expressed in the title."

We think the angles of the action of the colored chilschools, and that the laxa long of the property or
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meration of and providing schools for the colored children of the state are properly connected
this examination. It declares that "all persons or certain things have no fore or effects and onto prohibit the states form of or of engage and the united states and of the state wherein
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schools, and that the laxa long of the state of the sta Prior to the act of May 13, 1869, making taxa-

THE NEGRO QUESTION AGAIN. late case of the State on the relation of Pitman vs. Tucker, Indiana, where many of the cases are cited.

It is very plain and obvious to us, that by the supplemental act of May 13, 1869, the legislature has provided for the education of the same rights by the white and colored children of the state was as follows: "When any schools and the operation of the state wherein they reside "

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In the State on the relation of Pitman dequal protection of exercising these rights shall be gratts and equally free to all." R. S., and and property and the full and equal protection in degree, as compared with the exercise and enjoy the supplemental act of May 13, 1869, the legislature provided for a general common school lature has provided for the education of the state wherein they reside "

PROBLEM OF MIXED SCHOOLS. dition it several states of the Union, they being admitted to the equal exe cise of civil and political rights and privileges with the whites in but one state of the Union. In pearly one half of the states of the Union, as a race, they lived in a state of life-long servitude, having no control of the district, over five and under twenty-one their time or actions—no right to acquire prop-erty—no lawful power to follow the promptings of their own thoughts and judgments—their lives and limbs-their minds and strength, the property and subject to the will of their masters; and, notwithstanding the preciamation of emancipation, this continued to be their condition, practically and in a large degree, until af-

tion, practically and in a large degree, until after the ratification of the 13th amendment to the constitution of the United States, December 18, 1885, 2 Kent's Com. 7 Ed., side page 252—258, and note 1 to side page 258; Scott & Sandford, 19 Hon. 363; Smith vs. Moody, 26 Ind., 299, Rev. Stat. 1831, 375; Id. 1838, 418.

By section 7 of article 11 of the constitution of 18 6, it is provided that there shall be reither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. R. S. 1838, p. 50

Section 2 of article 3 provided for an enumeration of all the white male inhabitants above the

tion of all the white male inhabitants above the age of twenty-one years. R. S. 1838, p. 38.
Section 1 of article 6 limited the right of suffrage to the white male ct izens of the United

States, of the age of twenty-one, and who had resided in the state one year immediately preceding the election. R. S. 185%, 41.

By the act of February 10, 1834, every such person coming into or being brought into this state, was prohibit d from residing therein, unless bond with good and sufficient security, to be approved by the oversees of the poor of some township, was given on behalf of such person township, was given on behalf of such person, payable to the state of Indiana, in the penal sum of \$500, conditioned that such person should not, at any time, become a charge to the county in which such bond was given, nor to any other county in the state, as also for such person's

good behavior, etc.

It provided penalties, likewise, for failure to comply with those provisions, consisting of hiring such person out and applying the proceeds to his benefit, and removal from the state; and by an imposed, and recovered by presenment or indictment, or harboring any such person ailing to give the required bond.

This act remained upon the statute book of this state, and continued in force for a period of over twelve years; and received the judicial sanction of the Supreme Court of the state. Rev. Stat. 1841, p. p. 375—376; Rev. Stat. 1838, p. p. 418—419; the State vs. Cooper, 5 Black fd., 28; Eaptiste vs. the State, Id., 283; Hickland vs. the State, 8 Id., 385.

Article XIII. of the constitution of this state, which took effect on the first day of November, look, and supers ded the constitution of isl6, pro-

This the constitution, and subsequent recog nized and decided constitutional legislation early establish. Acts June 18, 1852, 2 G. & H. 443; Hatwood vs. The State, 18 Ind. 492; Berkshire vs. The State, 7 Ind. 389.

In the light of the foregoing history, constitu-tional provisions, legislative acts and judicial constructions thereof, it is very plain and ob-vious to us that persons of the African race were to declare the laws as written, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the constitution is fixed when it is adopted, and it is not different at any subsequent time when a or thoughtful framers of our constitution when court has occasion to pass upon it." sections, or of the people of the state when they ratified and adopted the constitution contain-

In our opinion, the privileges and immunities secured by section 23 of article i were not intended for persons of the African race, for the secther cardinal rule of construction laid by this an hor is, that the whole instruction any portion or clause thereof. He "Nor is it lightly to be inferred any portion of a written law is ambiguous as to require inection were intended for citizens of this state, Nor, in view of the other provisions of our constitution, and in the light of the rules of con-struction before stated can it be successfully maintained that the provisions of section 1 of article 8 were intended for the children of African race. It is unreasonable to suppose that the framers of the constitution, who had denied to that race the right of citizenship, of suffrage, to that race the right of citizenship, of suffrage, of holding office, of serving on juries and of testifying as witnesses in any case where a white person was a party, and had prohibited, under heavy pains and penalties, the further emigration of that race into the state, intended to provide for the education of the children of that race in our company schools with the white children of the mon schools with the white children of the

The public sentiment of the state at that time

heretofore laid down, to the various provisions of our constitution, will conclusively demon-strate that the provisions of the sections under examination have no application to the children and grandchildren of the appelles.

One of the cardinal rules of construction is,

that courts shall give effect to the intent of the framers of the instrument and of the people in adopting it. Then, as it is man!fest that neither the framers of the constitution nor the people in nation of that contest, can not, we think, be adopting it, intended that the children of the successfully controverted. African race should participate in the advan-tages of a general and uniform system of common schools, we possess no power to adjudge to them what was not designed for them.

Another rule of construction is, that in placing

was made and adopted by and for the exclusive use and enjoyment of the white race. Anyother construction would convict the members of the constitutional convention and the voters of the state of the grossest inconsistency, absurdity and injustice. It would be monstrous to hold rethat the framers of the constitution in adopting and the voters of the state. In ratifying it, intended that the common schools of the state should be open to the children of the African race, when, by the same instrument, that portion of such race, as then resided in the state, were denied all political rights, privileges and immunities and the further emigration of that race into the state was prohibited by the thirteenth article of the constitution, which received the almost unanimous approval of the constitutional convention and the voters of the lived the almost unanimous approval of the voters of the state.

Another important rule of construction that the meaning of a constituion is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it. A constitution is inflexible and can not bend to circumstances, or be modified by public opinion. It is, therefore, the duty of the court to declare the law as is written, leaving to the people in their sovereign capacity to make such changes as new circumstances that they are in point and fully support the doctrines announced.

It is essential to a correct interpretation of the above provisions of our constitution in the light of the above rules of construction, that we should look to the history of the three and examine the condition of things existing prior to and at the time of the adoption and ratification of our present state constitution and compare the second state of the different states cuti
years of the united States, could be changed by a simple congressional enactment; for it is clear, admitting it to be valid, that it does not relate to, nor bear upon the right claimed in public sentiment to influence it in the constitution in the light of the above rules of construction, that we should look to the history of the three and examine the condition of things existing prior to and at the time of the adoption and ratification of our present state constitution in the light of the above rules of construction to a written constitution of its founders, would be justly changeable with reckless disregard of official oath and public duty."

The views which we have a constitution of the different states cutizens of the United States, could be changed by a simple congressional enactment; for it is clear, admitting it to be valid, that it does not relate to, nor bear upon the right claimed in purports only to confer upon negroes and multiple to the different states cutizens of the United States, could be changed by a simple congressional enactment; for it is clear, admitting it to be valid, that it does not relate to, nor bear upon the right claimed in purports only to confer upon negroes and multiple to the different states cutizens of the United States, could be changed by a simple congressional enactment; for it is clear, admitting it to be valid, that it does not relate to, nor bear upon the right congressional enactment; for it is clear, admitted to a congressional enactment; for it is clear, admitted to a congressional enactment; for it is clear, admitted The views which we have expressed are greatly strengthened and enforced by the construction which this court placed upon a section of the constitution of 1816, and of an act passed while

Section 1 of article 9 declares that "knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government and spreading the oppor-tunities and advantages of education through the various parts of the country, being highly conducive to this end," etc. 6 6 4 The general assembly shall, from time to time, pass

degree by the public school is supported in any degree by the public school fund, or by taxation, so long as the money so derived shall be expended therein, such school shall be open and free to all the white children resident within

Section 2 of article 4, of the constitution of the munities of citizens of the United States."

This clause does not refer to citizens of United States declares, "that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states,"

This section, at an early date, received a construction in the case of Corfle'd vs. Coryell, which has ever since been recognized and approved. It relates only to "those privileges and immunities which are fundamental:" and which may all "be comprehended un er the foll-wing head-: protection by the government, with the right to acquire and posses property of every kind, and to pursue and obtain happiness and safety, subject nevertheless, to such restraints as the government may prescribe for the general good of the whole."

In the slaughter house cases, the Supreme Cour of th United States said, "its sole purpose was to declare to the several states, that whatever those rights, as you g ant them to our own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdic-

sovereign powers vested in the state governments by their respective constitutions remain unaltered and unimpaired, except so far as they were granted to the government of the United States. In one of the states of the the United States, and the states of the states o the United States. In one of the states of the union, colored children were entitled to admission into schools for white children, and to be taught with white children, and yet, if a person residing in such state should remove into some obligations of contracts. But with the exception ther state, where such right is denied, the right so exercised in the state from which the person removed would be lost, because, it was not one of those fundamental rights which accompanies the person, but a domestic regulation exclusively within the constitutional and legislative power of each state, and to be regarded in the nature of a domestic regulation necessary for the good of the whole people, or which the good of the people of one state, in their sovereign judgment, required to be different from the regulation in another, as best securing "the general comfort and prosperity of the state." Story on the Constitution, sec's 1353, 1499; Cooley's Const. Lim. 573, 574; 2 Kent's Com. side

p. 71; 2 Op. Att'y Gen'l 426; Commonwealth vs. Alger, 7 Cush. 84; The City of New York vs. Milu, 11 Pet. 139; Slaughter House Cases, 16 Wal. 62; Bradwell vs. The State, 1d. 130; Thayer vs. Hedges, 24 Ind. 282; Potter's Dwarris on Stat. 352, 452, 455.

It is very plain that the tenth amendment of the constitution of the United States can not receive such construction as will aid the claim the appellee. It deciares "that the powers no the appellee. It deciares "that the powers no delegated to the United States, by the constitution, nor prohibited by it to the state, are reserved to the states respectively, or to the people;" and the power to fix the qualifications of the citizen of the state, and to establish his rights in the state, is of the powers expressly reserved to the state by this amendmen; for there is no express limitation of the power of the states, in the federal constitution in this respect as it then stood, and such limitation spect, as it then stood, and such limitation The public sentiment of the state at that time was unfriendly to the African race and their participation in governmental affairs, and demanded their exclusion from the state; and it is not for us to say, sitting here, whether such policy was wise or unwise, and we speak of it only as a matter of history having a bearing upon the construction of our constitution.

An application of the rules of construction, heretofore laid down, to the various provisions

spect, as it then stood, and such limitation could not exist without express mention. Rawle on Constitution, 84-87; Story on the Constitution, sec. 1,904; Works of Webster, vol. 3, p. 322; Cooley's Const. Lim., 19; Federalist, 140; Slaughter House Cases, 16 Wal., 70, 71, 72, 73; Barron vs. Baltimore, 7 Pet., 242; Smith vs. Maryland, 18 How., 71; Pervear vs. Commonwealth, 12 S. & R., 221; heretofore laid down, to the various provisions Jane vs. Commonwealth, 3 Met. (Kv.) 18; Lincoln vs. Smith, 27 Vt., 336; Warren vs. Paul, 22 Ind., 276; The State ex rel. Lakey, 32 Ind., 1.

That the views hereinbefore expressed correctly represent the relative powers of the federal and state governments at the close of the great civil war and until after the ratifi-

cation of the amendments to the constitution of the United States, which followed the termination of that contest, can not, we think, be by subjecting them to the control of Congress, We next proceed to determine whether such amendments, or either of them, has worked a hange, and, if it has, to what extent.

common schools, we possess no power to adjudge to them what was not designed for them.

Another rule of construction is, that in placing a construction upon one section or ciause, courts are required to examine the whole instrument and to give effect, if possible, to the whole instrument; and if different portions seem to conflict, the courts muss harmonize them, if practicable, and lean in favor of a construction which will render every word operative, rather than one which may make some idle and nugatory. There is but one construction which will preserve the unity, harmony and consistency of our state constitution and that is to hold that it was made and adopted by and for the exclusive president's proclamation of emancipation upon

president's proclamation of emancipation upon slavery; and its obvious purpose was to forbid all shades and conditions of African slavery. Slaughter House Cases, 16 Wal 68, 69.

It had no other office; and its real effect was more for the future than the present. As to the matter of social and political rights the African was left just where section 37, article 1, of our state constitution left him, and subject to all the inconveniencies and burdens incident to his color and race, except his former one of servitude. He was a person whose place and office, in the body politic, was yet to be designated and established. He possessed no political rights, in the usual and proper sense of that term, through, or had none conferred by this enactment.

Following this constitutional amendment, the Following this constitutional amendment, the civil rights bill of April 9, 1896, was enacted by Congress, the first section of which declares who

congress, the first section of which declares who are citizens of the United States, and specifies certain rights which shall be accorded to such citizens in the states and territories, and the residue is made up of pains and penalties for violation of the rights sought to be conferred, and the machinery for enforcing its provisions. It is not worth while to enquire into the effect of this act, or whether the federal constitution, which made citizens of the different states with which made citizens of the different states citizens of the United States, could be changed by a simple congressional enactment; for it is clear, admitting it to be valid, that it does not relate to, nor bear upon the right claimed in this case, for it purports only to confer upon negroes and mulattoes the right, in every state and territory, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and the full and equal benefit of all laws and proceedings for the security of person and property as enjoyed by white citizens, and subjects them to like pains and penalties. 3 Is Stat. Ind. 589. In this nothing is left to inference. Every right intended is specified.

The 14th, amendment to the federal constitution was proposed by Congress July 16, 1866, and declared by the secretary of state to have been ratified July 28, 1868. It consists of several sections; but section 1 is the only one necessary to see

schools. It was further held that, although the negroes might be entitled to share in the funds derived from the sale of lands donated by Congress, yet they would have to do so in separate schools, and not in schools with white children.

Both constitutions provided for a general and uniform system of common schools; both provided that the tuition should be free and the schools equally open to all. Both constitutions deprived the negroes of all political rights. If the legislature, under the constitution of 1816, had the right to exclude the negroes f om the public schools for white children, it is difficult to see why it may not be done under the present constitution.

Born within the Unite States. It recognizes and establishes a "distinction between citizenship of a state. Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizenship of a state, which are distinct from each other, and which are distinction between citizenship of the United States and citizenship of a state. Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the States to make him a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the States to make him a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a

law which shall abridge the privileges or imstates. It embraces only citizens of the United States. It leaves out the words "citizen of the state," which is so carefully used, and used in contradistinction to citizens of the United States in the preceding sentence. It places the privileges and immunities of citizens of the United States under the protection of the federal contitution, and leaves the privileges and immunities of citizens of a state under the protection of the state constitution. This is fully shown by the recent decision of the Supreme Court of the United States in the Slaughter House cases, 16 Wallace,

Mr. Justice Miller, in delivering the opinion of the court and in speaking in reference to the clause under examination, says:

"It is a little remarkable, if this clause was intended as a protection to the citizen of a state against the legislative power of his own state, that the word citizen of the state should be left out when it is so carefully used, and used in contradistinction to citizens of the United States, in the very sentence which procedes it. It is too clear for argument that the change in phrasetion." It did not compel the state, nto which ology was adopted understandingly and with a

stitution imposed upon the states-such, for inlaws, bills of attainder, and laws impairing the obligations of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the states, as above defined, lay within the constitutional and legislative power of the states, and without that of the federal government. Was it the purpose of the fourteenth amendment, by the simple declaration that no state should make or enforce any law which shall about the state of elits.

rights heretofore belonging exclusively to the "All this and more must follow, if the position of the plaintiffs in error be sound. For not only are these rights subject to the control of Congress whenever, in its discretion, any of them are supposed to be abridged by state legislation, but that body may also pass laws in advance, limiting and restricting the exercise of legislative power by the states, in the most ordinary and useful functions, as in its judgment it may think proper on all such subjects. And still further, such a construction followed by the reversal of the judgments of the iowed by the reversal of the judgments of the Supreme Court of Louisiana in these cases" (these judgments sustained the validity of the grant, by the legislature of Louisiana of an exclusive right guarded by certain limitations as to price, etc., to a corporation created by it, for twenty-five years to build and maintain slaugh-ter houses, tc., and prohibited the right to all others, within a certain locality), "would conothers, within a certain locality), "would constitute this court a perpetual censor upon all legislation of the states, on the civil rights of their own chizens, with authority to nullify such as it did not approve as consistent with such as they existed at the time of the children of both classes in the locality of the parties. Under the lawful regulation of equal children of each class

"The argument, we admit, is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far-reaching and per-vading, so great a departure from the str clure and spirit of our institutions; when the effect in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relation of the state and federal governments to each other and of both these governments to the people, the argument has a force that is irresis-tible, in the absence of language which expresses such a purpose too clearly to admit of doubt. We are convinced that no such results were intended by the Coogress which proposed these amendments, nor by the legislatures of the states which ratifled them."

Third. "Norshall any state deprive any person of life, liberty, or property, without due

This clause is the same contained in the fifth amendment to the constitution of the United States, but there applied to the action of the federal government, and here placed as a check upon the states. But the constitution of our state, and perhaps of all the states, contain just such a provision, so that it expresses no new principle, but is the old rule in force since the foundation of the state governments. It prohib-its the states from depriving any person of life, liberty or property except "in the due course of legal proceedings, according to those rules and forms which have been established" by the

forms which have been established" by the state, "for the protection of private rights." Cooley on Const. Lim. 356, 357; Westervelt vs. Gregg, 12 N. Y., 209.

Fourth. "Nor deny to any person within its jurisdiction the equal protection of the laws."

In regard to this clause the Supreme Court of this state, in The State vs. Gibson, 36 Ind., 389, say, it "seems to have been added in the abundance of caution, for it provides in express terms what was the fair, logical, and just implication from what had preceded it, and that was, that the persons made citizens by the amendment should be protected by the laws in the same manner, and to the same extent, that white citizens were protected." white citizens were protected."
In the case of The State vs. Gibson, supra, this

tion of the United Stales. It was claimed in that case, that such amendment had abolished the laws of this state prohibiting the intermarriage of negroes and whites. We held that marriage is a purely domestic institution, and subject to the exclusive control of the state; that such amendment had not conferred on the federal government any power to interfere with the institution of marriage; and that such amendment had not entered the intermediate of the state, within the limits of her own constitution, to fix, secure and protect the rights, privileges and immunities of her citizens as such, of whatever race or color they may rigge; and that such amendments have not in entering the power of the state, within the limits of her own constitution, to fix, secure and protect the rights, privileges and immunities of her citizens as such, of whatever race or color they may be, so as to seeme her own intermediate. riage; and that such amendment had not enlarged the powers of the federal government nor diminished those of the states. We then said:
"The fourteenth amendment contains no new structure and spirit of our complex system of The 14th, amendment to the federal constitution was proposed by Congress July 16, 1866, and declared by the secretary of state to have been ratified July 28, 1868. It consists of several sections; but section 1 is the only one necessary to this examination. It declares that "all persons the proposed of the states and spirit of our complex system of government, as it came from the hands of the great and illustrious men, who achieved our infederal government, nor diminish those of the states. The inhibitions against the states doing this examination. It declares that "all persons the proposed by Congress July 16, 1866, and ent possessors o all power, to the federal government, as it came from the hands of the great and illustrious men, who achieved our infederal government. It did not enlarge the powers of the states. The inhibitions against the states doing this examination. It declares that "all persons the proposed by Congress July 16, 1866, and ent possessors o all power, to the federal government. Anierior to the adoption of the states. The inhibitions against the states doing this examination. It declares that "all persons the proposed by Congress July 16, 1866, and ent possessors o all power, to the federal government. Anierior to the adoption of the states doing this examination. It declares that "all persons the proposed by Congress July 16, 1866, and ent possessors of the powers of the powers of the great and illustrious men, who achieved our infederal government. Anierior to the adoption of the government are proposed by Congress July 16, 1866, and ent possessors of the powers of the great and illustrious men, who achieved our infederal government. The constitution of the proposed by Congress July 16, 1866, and ent power from the people, who are inherent constitutions are proposed by Congress July 16, 1866, and ent power from the people who are inherent constit

In the Slaughter H use Cases, the Supreme Court of the United States say, this is a declaration, "that persons may be citizens of the United States without regard to their citzenship of a particular state, and it overturns the Bred Scatt de ision, by making all persons born bred Scatt de ision, by making all persons born will be hereinafter sh wn, it imposes some imitations upon the powers of the states, as to slavery and the equal protection of the rights of slavery and the equal protection of the rights of slavery and the equal protection of the rights of the states. amendment in any manner nor to any extent impaired, weakened or taken away any of the and free to all the white children resident within the district, over five and under twenty-one years of age." Chapter 15, B. S., 1843, p. 321.

In the case of Lewis vs. Henly, 2 Ind., 352, this court was required to place a construction upon the above quoted section, and it was held that negro children were not entitled to admission to the schools with the white children, and that the legislature had the right under the constitutions of a state, and subject to its jurisdiction, was intended to exclude negro children from our public.

In the case of Lewis vs. Henly, 2 Ind., 352, this diction, citizens of the United States. That its main purpose was to establish the cutizenship of the negro can admit of no doubt. The phrase, subject to its jurisdiction, was intended to exclude negro children from our public born within the Unite. States. It recognizes in all substantial respects. pressed have been. In all substantial respects, sustained by the highest judicial tribenal in this country, and the one especially charged with the construction and interpretation of the federal constitution. By the solemn decision of that high court the privileges and immunities be-louging to the cuizen of the state, as such, rest for their security and protection we ere they have heretofore rested, with the states them-

In the State ex rel Grimes vs. McCan and others, 2i Ohio Stat 195, the Supreme Court of that state uses the following language:

'It would seem, then that under the constitupublic schools for white children, it is difficult to see why it may not be done under the present constitution.

Having reached the true construction of the constitution of this state, as it came from the hands of its framers, and received the sauction of her qualified voters, the next step is to find out the extent of its qualification or change by the constitution of the United States.

It would seem, then that under the constitution and laws of this state the right to classify the youth of the state for without its territories; but he can not be a citizen of a state until he becomes a bona fide resident of the principles and the repeat dadjudications of this state.

Second, "No state shall make or enforce any cially disturbed."

But it is claimed that the law author/sing the

"But it is claimed that the law a thor zing the classification in question contravenes the pro-visions of the 14th amendment of the consultation of the United States, and is, therefore, ab-

rogated thereby.

"Unquestionably all coobts, wheresoever they existed, as to the citizenship of colored persons and their right to the 'equal protection' of the laws,' are settled by this amendment. But neither of these were dented to them in this state before the adoption of this amendment. At all events, the statu es classifying the youth At all events, the statu es classifying the youth of the state for school purposes on the basis of color, and the decisions of this court in relation thereto, were not at all based upon a denial that colored persons were clizens, or that they are entitled to the equal protection of the laws. It would seem, then, that these provisions of the amendment contain nothing conflicting with the tatule authorizing the class fication in question, nor the decisions heretogen made in question, nor the decisions heretotore made touching the point in controversy in this case. Nor do we understand hat the contrary is claimed by counsel in this case. But he clause resided on, in behalf of the plaintiff, is that which forbids any state to "make o. enforce any law which wi I abridge the privileges or immunities of citizens of the United States."

grievous an abridgement of the privileges of the citizens of the state, for they would thereby be deprived of privileges derived from the state, and not of privileges derived from the United Sta es.

But we need not now further discuss this point, as the true meaning and exact limits of the clause in question are not necessarily involved in this case. For, conceding that the 14th volved in this case. For, conceding that the 14th amendment not only provides equal securities for all but guarantees equality of rights to the citizens of a state, as one of the privileges of citizens of the United States, it remains to be seen whether this privilege has been abridged in the case before us. The law in question surely does not attempt to deprive colored persons of any rights. On the contrary, it recognizes their right, under the constitution of the abridge the privileges and immunities of citi- nizes their right, under the constitution of the abridge the privileges and immunities of citi-zens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the states to the federal government? And when it is declared that Congress shall have the power to enfore that article, was it intended to bring within the power of Congress the entire domain of civil edly it should be done in a manner to promote the best interests of all. But this tas must, of

affords to colored citizens an additional g. ar-anty of equality of rights to that already se-

poses upon any basis which does not exclude either class from eq al school advantages, is no infringment of the equal rights of cutzens secured by the constitution of the state.

We have seen that the law, in the case before my works

educational privileges, the chi dren of each class are required to attend the school provided for them, and to which they are assigned by those having the official control of all. The plaintiff, then, can not claim that his privileges are abridged on the ground of inequality of school advantages for his children, nor can he decide where his children shall be instructed, or what teacher shall perform that office without the teacher shall perform that office, without obtaining privileges not enjoyed by white cirizens. Equality of rights does not involve the necessity of educating white and colored persons in the same school any more than it does that of educating children of both sexes in the same school, or that different grades of scholars must be kept in the same school. Any classification which preserves are the same school.

preserves substantially equal school advantages is not prohibited by either the state or federal constitution, nor would it contravene the provisions of either. There is, then, no ground upon which the plaintiff can claim that his rights, under the lith amendment have been in-The foregoing opinion, having been rendered since the radification of the 14th amendment, is directly in point and is entitled to great weight

and consideration, coming as it does from a court distinguished for its learning and ability. RIGHTS OF THE STATE. How far, then, have these amendments operated to change the constitution of Indiana, or im-

posed limitations or restrictions upon the sovereign power of the state? We answer in the following particulars:

1. The state can not in the future, while a member of the Federal Union, change her constitution so as to create or establish slavery or involuntary servitude, except as a punishment for crimes whereof the party shall have been convicted—thus protecting the new class of citizens, i. e., negroes and mulattors, from being again reduced to slavery.

2. The state can not deny to, nor deprive a citizen of the United States.

zen of the United States, i. e., any negro or mulatto, of those national rights, privileges or immunities which belong to him as such citizen.

3. The state must recognize as its citzen any citizen of the United States, i. e., any negro or mulatto, who is or becomes a bona fide resident therein.

4. The state must give to such, i. e., to such ne-gro or mulatto who is or who becomes a bona fide resident therein, the same rights, privileges and immunities secured by her constitution and laws court was called upon to place a construction upon the fourteen h amendment to the constituto her other, i. e., to her white citizens. In our opinion, such amendments have not in